

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

BRENT J. THOMPSON AND WALLACE SHEELY

PLAINTIFFS

V.

CIVIL ACTION NO. 1:08CV553-LTS-RHW

SCOTTSDALE INSURANCE COMPANY

DEFENDANTS

ORDER

The only matter before the Court in this cause of action at this time is Defendant's [6] Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(2), (4), (5) & (6), and 4(h). The motion concerns the manner in which Plaintiffs originally attempted to obtain service of process, and goes so far as to request that this case be dismissed with prejudice.

Plaintiffs filed a [11] response to the motion, to which Defendant did not reply. It appears to the Court that the problems with service have been corrected through the filing of an [4] Amended Complaint, as well as re-issuance and service of summons in a timely manner. Although Defendant's reaction to the original [1] Complaint is the [6] motion to dismiss, it has filed a formal [15] Answer to the Amended Complaint.

Under these circumstances, dismissal is too drastic a remedy and the Court prefers (as should the parties) a judicial decision on the case's merits. There is no prejudice to Defendant in allowing this matter to proceed.

Accordingly, **IT IS ORDERED:**

Defendant's [6] Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(2), (4), (5) & (6), and 4(h) is **DENIED**.

SO ORDERED this the 13th day of February, 2009.

s/ L. T. Senter, Jr.
L. T. SENTER, JR.
SENIOR JUDGE